IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE WRIT JURISDICTION

WRIT PETITION NO. 5090 Of 2005

Adarsh Education Society & Anr. .. Petitioners.

Vs.

Miss Doloroza T. Pereira ..Respondent.

Mr. Rajesh Gehani for the Petitioners.

Mr.Manish Mistry for the Respondent.

CORAM : P. V. KAKADE,J.

DATED : 16TH MARCH, 2006.

P.C.:

1. Heard learned counsel for the petitioners as well as the respondent.

2. The petition is filed against the order passed by the Presiding Officer, Addl. School Tribunal, New Mumbai dated 23rd March, 2005, allowing the appeal and setting aside the order of termination dated 17.2.2001 and further directing the present petitioners to reinstate the present respondent on her previous original post of Senior Clerk within 40 days from the date of the said order.

3. It also may be noted that the since this order is not complied with by the present petitioner, the present respondent preferred a contempt petition against the present petitioner and sought the said petition to be heard and disposed of alongwith this petition.

4. Turning back to the present petition, it is to be noted that respondent No.1 was appointed as Junior Clerk on 20th September, 1985 in the petitioners' school. She was promoted to the post of Senior Clerk on 01st June, 1988. She was again promoted in the post of Acting Principal of the school during the period from October, 1993 to June 1995 in addition to her duties as Sr. Clerk. She also received a best office staff Award in the year 1996 and also enjoyed the post of Administrative Officer by order dated 04.09.1999. As the post of Administrative Officer was abolished, her services were terminated by the petitioners by order dated 17.02.2001 against which the present respondent preferred an Appeal for setting aside the said order of termination. The petitioner contested the said Appeal and inter-alia submitted that since the post of Administrative Officer was abolished, the services of the present respondent came to be terminated. In other words, the present petitioner tried to justify its order of termination of the respondent's services. The appeal

was preferred by the present respondent against the said order before the Tribunal. The School Tribunal after hearing both the sides and considering the evidence on record, came to the conclusion that the order of termination dated 17.2.2001 was liable to be set aside and proceeded to pass the impugned order accordingly.

5. At the outset it is to be noted that a very small question is required to be considered to the effect that admittedly the respondent was initially appointed in the post of Jr. Clerk since 20th September, 1985 and then was promoted to Sr. Clerk from 1st June, 1988. The order of appointment to the post of Sr. Clerk was produced on the record. It also appears from the record that in the year 1988, the present respondent was assigned the work of Administrative Officer. Thereafter, it is the case of the petitioner, that the respondent's services came to be terminated on the ground that the post of administrative officer was abolished. However, it is pertinent to note that there is no appointment order produced on record so as to show that the respondent who was working as Sr. Clerk was officially appointed as the Administrative Officer and such post was in existence at the relevant time, wherein the respondent came to be appointed. In other words, the record reveals that the respondent who was working

as Sr. Clerk, appears to have been assigned additional job of administrative officer by the management. Therefore, the services of the respondent should not be illegally terminated on the ground that the post of Administrative Officer was abolished. In other words, if the said post is abolished then the respondent was bound to be continued in service in her original capacity as a Senior Clerk and as such it is not that the order passed by the Tribunal is illegal and therefore, liable to be set aside. Be as it may, the order passed by the Tribunal appears to be just and proper and therefore, does not require interference by this court.

6. In the result, the petition stands dismissed with costs, quantified at Rs. 5000/- to be paid to the respondent within two weeks from the date of this order. On the request of the learned counsel for the petitioner, the petitioner is given two weeks time to comply with this order.

16.03.2006 (P.V.KAKADE,J)